

ANN BAVENDER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
KATHRYN A. KLEIMAN
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
J. TODD METCALF*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY*
HOWARD M. WEISS
* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

office@fhh-telcomlaw.com

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
WRITER'S NUMBER
(703) 812-

DOCKET FILE COPY ORIGINAL

RECEIVED

MAY 20 1997

Federal Communications Commission 0474
Office of Secretary

May 20, 1997

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Reply Comments of Metro Broadcasters-Texas, Inc.
MM Docket No. 97-91; RM-8854
Lewisville, Gainesville, Robinson, Corsicana,
Jacksboro, and Mineral Wells, Texas

Dear Mr. Caton:

Transmitted herewith on behalf of Metro Broadcasters-Texas, Inc., are an original and four copies of its Reply Comments filed in the above-captioned proceeding in support of the substitution of Channel 237C2 for Channel 237C3 at Howe, Texas, in lieu of the proposal set forth in the *Notice of Proposed Rule Making and Order to Show Cause*, 12 FCC Rcd 3059 (Chief, Allocations Branch 1997).

Should any questions arise concerning these comments, please communicate directly with this office.

Very truly yours,



Andrew S. Kersting
Counsel for
Metro Broadcasters-Texas, Inc.

Enclosures
cc (w/ encl.): Certificate of Service

No. of Copies rec'd
List ABCDE

024

DOCKET FILE COPY ORIGINAL
BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

MAY 20 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Lewisville, Gainesville, Robinson,)
Corsicana, Jacksboro, and)
Mineral Wells, Texas))

MM Docket No. 97-91
RM-8854

To: Chief, Allocations Branch

REPLY COMMENTS

METRO BROADCASTERS - TEXAS, INC.

Harry C. Martin, Esquire
Andrew S. Kersting, Esquire
Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street
11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

Its Attorneys

May 20, 1997

TABLE OF CONTENTS

	<u>Page</u>
Summary	ii
I. Heftel’s Proposal Is Defective Because It Failed To Protect the Reference Coordinates For the Existing Allotment of Channel 240C1 at Mineral Wells	1
II. Heftel’s Proposal Should Be Denied Because Robinson Is Not Entitled To a First Local Service Preference	3
III. Heftel’s Alternative Proposal Should Not Be Adopted	10
IV. The Comments of Graham Should Not Be Considered	11
V. Conclusion	11

SUMMARY

HefTel Broadcasting Corporation (“HefTel”) proposes the substitution of Channel 300C1 for Channel 300C2 at Gainesville, Texas, the reallocation of Channel 300C1 to Lewisville, Texas, and the modification of its construction permit for Station KECS(FM) to specify operation on Channel 300C1 at Lewisville. HefTel also proposes the substitution of Channel 300A for Channel 300C1 at Corsicana, Texas, the reallocation of Channel 300A to Robinson, Texas, and the modification of its license for Station KICI-FM to specify operation on Channel 300A at Robinson.

The Channel 300A substitution at Robinson is necessary to accommodate the Channel 300C1 reallocation at Lewisville. In order to accommodate the substitution at Robinson, HefTel also proposes to substitute Channel 237A for Channel 299A at Jacksboro, Texas, and Channel 240C3 for Channel 240C1 at Mineral Wells, Texas.

Channel 237A cannot be substituted for Channel 299A at Jacksboro in compliance with the minimum distance separation requirements because it is 15.3 kilometers short-spaced to the existing Channel 240C1 allotment at Mineral Wells. Therefore, because HefTel failed to protect the existing allotment of Channel 240C1 at Mineral Wells, and the proposed substitutions and reallocations of Channel 300C1 to Lewisville and Channel 300A to Robinson are dependent upon the substitution of Channel 237A for Channel 299A at Jacksboro, the proposal set forth in the *NPRM* cannot be adopted.

Furthermore, even assuming, *arguendo*, that the existing allotment of Channel 240C1 at Mineral Wells did not preclude the proposal set forth in the *NPRM*, HefTel’s proposed substitution and reallocation of Channel 300A to Robinson cannot be adopted because Robinson is not entitled to a first local service preference, and the proposed reallocation would not result in a preferential

arrangement of allotments under the fourth FM allotment priority. Therefore, because the Channel 300A substitution at Robinson is necessary to accommodate the Channel 300C1 reallocation to Lewisville, the proposal set forth in the *NPRM* cannot be adopted for this additional reason.

Finally, the comments filed by Graham Newspapers, Inc., were untimely, and, thus, are not entitled to consideration in this proceeding.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-91
Table of Allotments,)	RM-8854
FM Broadcast Stations)	
(Lewisville, Gainesville, Robinson,)	
Corsicana, Jacksboro, and)	
Mineral Wells, Texas))	

To: Chief, Allocations Branch

REPLY COMMENTS

Metro Broadcasters-Texas, Inc. ("Metro"), licensee of Station KHYI(FM), Howe, Texas, by counsel, hereby submits these comments in response to the comments filed May 5 and May 6, 1997, by Heftel Broadcasting Corporation ("Heftel") and Graham Newspapers, Inc. ("Graham"), respectively, in connection with the *Notice of Proposed Rulemaking and Order to Show Cause*, 12 FCC Rcd 3059 (Chief, Allocations Branch 1997) ("*NPRM*"), in the above-captioned proceeding. In support of these reply comments, the following is stated:

I.

Heftel's Proposal Is Defective Because It Failed To Protect the Reference Coordinates For the Existing Allotment of Channel 240C1 at Mineral Wells

As set forth in the *NPRM* at ¶1, the substitution and allotment of Channel 300C1 to Lewisville, Texas,¹ is dependent upon the substitution and allotment of Channel 300A to Robinson. The allotment of Channel 300A to Robinson requires the substitution of Channel 237A for Channel

¹ Unless otherwise indicated, all of the communities referenced herein are located in the state of Texas.

299A at Jacksboro, which, in turn, requires the downgrade of Channel 240C1 at Mineral Wells to Channel 240C3. *See* Heftel Comments, p. 11.

Section 73.207(a) of the Commission's rules provides that the Commission will not accept petitions to amend the Table of Allotments unless the reference points meet all of the minimum distance separation requirements. 47 CFR §73.207(a). Channel 237A cannot be substituted for Channel 299A at Jacksboro in compliance with the minimum distance separation requirements. As demonstrated in Exhibit 1 to Heftel's Petition for Rulemaking, filed July 26, 1996, the proposed substitution of Channel 237A at Jacksboro is 15.3 kilometers short-spaced to the Channel 240C1 allotment at Mineral Wells. *See* Exhibit A hereto. Although the construction permit for the Channel 240C1 facility at Mineral Wells has expired,² Heftel still is required to protect the Channel 240C1 allotment since its petition does not include a request to delete the channel.³ *Eldorado and Lawton, Oklahoma*, 5 FCC Rcd 618 (Chief, Allocations Branch 1990) (NPRM) (subsequent history omitted).

² As stated in Metro's Comments and Counterproposal, filed May 5, 1997 ("Comments"), Jerry Snyder and Associates, Inc. ("JSA"), is the licensee of Station KYXS(FM), Mineral Wells. JSA's efforts to construct its Class C1 facilities were frustrated by the death of the property owner of JSA's proposed transmitter site, and the fact that his widow and son were unwilling to make the property available to JSA while the property was in the deceased's estate. Although JSA's efforts to find an alternative site were unavailing, after the estate sold the land to a local municipal water district, JSA entered into an arrangement with the district for the use of a portion of the land for its transmitter site. Shortly thereafter, on November 25, 1996, JSA filed an application to construct its new Class C1 facility (File No. BPH-961125IG), and that application currently remains pending. *See* Metro's Comments, pp. 2-3; Comments of JSA, filed May 5, 1997, and accompanying Declaration of Jerry Snyder. Therefore, JSA clearly has demonstrated that it still has an interest in the Channel 240C1 allotment to Mineral Wells.

³ The Commission does not delete a channel where there is an expression of interest demonstrated by the filing of an application by the initial comment deadline, even where a construction permit has been forfeited and cancelled. *Driscoll, Gregory and Robstown, Texas*, 9 FCC Rcd 3580, n.3 (Chief, Allocations Branch, 1994) (NPRM) (subsequent history omitted). *See also Martin and Tiptonville, Tennessee*, 11 FCC Rcd 12695 (Chief, Allocations Branch 1996) (same).

Therefore, because Heftel failed to protect the existing Channel 240C1 allotment at Mineral Wells in accordance with Section 73.207(a) of the rules, and the proposed substitutions and reallocations of Channels 300C1 to Lewisville and 300A to Robinson are dependent upon the substitution of Channel 237A for Channel 299A at Jacksboro, the proposal set forth in the *NPRM* cannot be adopted.

II.
Heftel's Proposal Should Be Denied Because Robinson
Is Not Entitled To A First Local Service Preference

In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990) (reconsideration order), the Commission stated that it would not blindly apply the first local service preference of the FM allotment priorities when a station seeks to reallocate a channel from a rural community to a suburban community of a nearby urban area.⁴ In determining whether a suburban community warrants a first local service preference, the Commission has established the following three criteria: (i) signal population coverage, (ii) the size of the suburban community relative to the adjacent city, and (iii) the independence-interdependence between the suburban community and the central city. See *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222, 3223 (1990), citing *Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988).

In this case, two of the three criteria set forth in *Tuck* strongly suggest that Robinson does not warrant a first local service preference. Under the first criterion of signal population coverage, Heftel's proposed substitution of Channel 300A to Robinson would provide a city-grade signal to

⁴ The FM allotment priorities are (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

70% of the Waco Urbanized Area.⁵ *NPRM*, ¶4. The criterion of size and proximity also suggests that Robinson is not entitled to a first local service preference. Robinson is less than one-fourteenth the size of Waco,⁶ and immediately adjacent to the larger central city. *See* Heftel Comments, Attachs. 1 & 2, Figure 1. Moreover, a substantial portion of Robinson lies within the Waco Urbanized Area. *Id.* at Figures 1-2.

The Commission has stated that the independence-interdependence criterion is the “critical consideration” in determining whether a suburban community warrants a first local service preference. *See KFRC*, 5 FCC Rcd at 3223, citing *Tuck*, 3 FCC Rcd at 5378. In evaluating the third criterion, the Commission has held that the showing required depends on the degree to which the size and proximity of the pertinent communities suggest that the community of license is simply an appendage to the large central city:⁷

... [T]he required showing of interdependence between the specified community and the central city will vary depending on the degree to which the second criterion -- relative size and proximity -- suggests that the community of license is simply an appendage of a large central city. When the specified community is relatively large and far away from the central city, a strong showing of interdependence would be necessary to support a *Huntington* exception. *On the other hand, less evidence that*

⁵ In *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10354 (Chief, Allocations Branch, 1995), the Commission stated that it will require stations seeking to move from rural communities to suburban communities located outside, but proximate to urbanized areas, to make the same showing that the Commission had previously required of stations seeking to move into urbanized areas if they would place a city-grade (70 dBu) signal over 50% or more of the urbanized area. *Id.* at ¶ 11.

⁶ According to the 1990 U.S. Census, Robinson has a population of 7,111, and the population of Waco is 103,590.

⁷ *KFRC*, 5 FCC Rcd at 3223. Indeed, the Commission “*presumptively* consider[s] the urbanized area to be the relevant metropolitan area ‘community’ in adjudicatory cases.” *Id.* (emphasis added).

the communities are interdependent would be required when the community at issue is smaller and close to the central city.

Tuck, 3 FCC Rcd at 5378 (emphasis added).

As demonstrated above, the great differential in size between Robinson and Waco and the fact the two communities are contiguous are compelling indications of interdependence. *See KFRC*, 5 FCC Rcd at 3223. Thus, in order for Robinson to receive a first local service preference, Heftel must make a strong showing through other evidence that Robinson is independent of Waco. *Id.*

In *Tuck*, the Commission set forth eight factors for assessing the interdependence between the specified community and the central city within an urbanized area.⁸ With respect to factor 1,

⁸ The eight factors are as follows:

- (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community;
- (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests;
- (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;
- (4) whether the specified community has its own local government and elected officials;
- (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code;
- (6) whether the community has its own commercial establishments, health facilities, and transportation systems;
- (7) the extent to which the specified community and the central city are part of the same advertising market; and
- (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and

(continued...)

most of Robinson's residents work in Waco. Heftel Comments, p. 7 and Attach. 2, Declaration of Jane Gilmore ("Gilmore Declaration"), p. 1. Under factor 2, Robinson does not have its own newspaper. In *KFRC*, the Commission found it "significant" that the specified community did not have its own newspaper. 5 FCC Rcd at 3224. Although Heftel claims there is a weekly insert called "Neighbor", which covers Robinson's local needs and interests, the insert appears in the *Waco Tribune*. Moreover, Waco's weekly newspaper, *The Hometown News*, is published in Waco. *Id.* at 7. These facts demonstrate that Robinson is completely dependent upon Waco even for its weekly newspaper.

Pursuant to factor 3, Heftel solicited several letters from selected community representatives who view Robinson as being a separate community from Waco.⁹ Heftel Comments, p. 7, and Gilmore Declaration, p. 2. Under factor 4, Robinson has its own local government and elected officials. *Id.* at 9.

With respect to factor 5, Robinson does not have its own telephone book or zip code.¹⁰ The telephone numbers of Robinson's businesses and residences are published in Southwestern Bell's Greater Waco telephone book. Although the Robinson Chamber of Commerce apparently published

⁸(...continued)
libraries.

Tuck, 3 FCC Rcd at 5378, ¶36.

⁹ Heftel's argument that there are "striking demographic differences between Robinson and Waco" should not be given any consideration under the independence-interdependence criterion. Indeed, there undoubtedly are substantial demographic differences between Chevy Chase, Maryland and the District of Columbia. It cannot be seriously contended, however, that Chevy Chase is independent of the Washington, D.C. Urbanized Area.

¹⁰ Waco has 14 zip codes, including one which also is assigned to Robinson. Heftel Comments, Attach. 2, Gilmore Declaration, p. 2.

a city telephone directory at one time, it has not been published in ten years. *Id.* and Gilmore Declaration, p. 2. In *KFRC*, the Commission also found it significant that the suburban community did not have its own phone book. *KFRC*, 5 FCC Rcd at 3224. Waco also does not have its own post office or telephone exchange. *See Rand McNally Commercial Atlas & Marketing Guide*, p. 532 (127th ed. 1996).

Under factor 6, there is little public transportation in either Waco or Robinson. Heftel Comments, p. 9. Robinson's health facilities consist only of a medical clinic, which is staffed by one physician and three employees who provide emergency and outpatient services. Robinson also has a dental clinic with three dentists. *Id.* Robinson does not have its own hospital, nor does it have any form of specialized health-care facility. Its primary commercial establishments are limited to a roofing company, a creamery, and a grocery store. *Id.*

With respect to factor 7, Robinson businesses advertise in Waco newspapers, on Waco radio and television stations, and in county-wide and state-wide merchandise papers. *Id.* at 9-10. Because the proposed facility would place a city-grade signal over 70% of the Waco Urbanized Area, and because Robinson has limited business activity, it is likely that most advertisers who would use the proposed station would be located outside the Robinson community. Thus, it is clear that Robinson is merely a small part of the Waco advertising market.

With respect to factor 8, Robinson has its own municipal services, police and fire protection, and schools. Heftel Comments, p. 10.

In analyzing the independence-interdependence criterion, there are, at most, three factors (3, 4 and 8) which tend to suggest that Robinson is independent of the Waco Urbanized Area. The remaining five factors firmly establish that Robinson is not sufficiently independent of the Urbanized

Area to warrant a first local service preference. Although Robinson has its own local government, police and fire departments, and schools, the full Commission made clear in *KFRC* that a proponent proposing to serve a lesser community within an urbanized area cannot establish that community's independence merely by showing the existence of a local government and ancillary municipal services.¹¹ *KFRC*, 5 FCC Rcd 3224, n.13. In this case, the majority of Robinson's residents work in Waco. Robinson has only limited business activity, is dependent upon Waco for its hospital and other health care facilities, and is part of the same advertising market. Moreover, Robinson does not have its own post office, separate zip code or telephone exchange, and has no newspaper or telephone book. All of these items are provided by or shared with the immediately adjacent and substantially larger city of Waco.

In light of the signal population coverage of Heftel's proposed facility together with the size and proximity of Robinson and Waco, the limited evidence of independence under the third criterion is insufficient to overcome the overwhelming evidence that the Waco Urbanized Area is the relevant metropolitan "community," and that Robinson is merely an appendage of the larger central city. *See KFRC*, 5 FCC Rcd at 3223-24, citing *Tuck*, 3 FCC Rcd at 5379. *See also Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681 (Chief, Allocations Branch 1996). Therefore, because all of the radio services in the Waco Urbanized Area should be attributed to the community of Robinson, Heftel's proposal must be considered under the fourth FM allotment priority ("other public interest matters"), rather than priority 3 ("first local service").

¹¹ The letters from certain community representatives who perceive Robinson as being separate from the Waco Urbanized Area are entirely self-serving and should be accorded diminished weight, particularly in light of the substantial evidence demonstrating that Robinson is merely an appendage of Waco.

In comparing the communities of Corsicana and Robinson, Heftel's proposal does not result in a preferential arrangement of allotments. Corsicana, which has a population of 22, 911, has only one other local radio station, Station KAND(AM). On the other hand, the Waco Urbanized Area is served by no less than 12 radio stations, all of which are attributable to Robinson.¹² Thus, the Waco Urbanized Area is already well-served and does not need an additional radio outlet. Moreover, the downgrade of Station KICI-FM at Corsicana to Channel 300A and the proposed reallocation of that channel to Robinson would result in a substantial loss in population served -- 73,347 persons. Heftel Comments, p. 13. Therefore, Heftel's proposal to substitute Channel 300A for Channel 300C1 at Corsicana and reallocate Channel 300A to Robinson should not be adopted because it will not result in a preferential arrangement of allotments.¹³ See, e.g., *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd at 12684-85. Furthermore, because the Channel 300A substitution at Robinson is necessary to accommodate the Channel 300C1 reallocation to Lewisville, Heftel's proposal to substitute Channel 300C1 for Channel 300C2 at Gainesville and reallocate Channel 300C1 to Lewisville also must not be adopted.

¹² Stations KBBW(AM), KBCT(FM), KCKR(FM), KKTK(AM), WACO-FM, KRZI(AM), KWBU(FM)*, KWTX(AM), and KWTX-FM are all licensed to Waco. Stations KBRQ(FM), Hillsboro, KEYR(FM), Marlin, and KWOW(FM), Clifton, also serve the Waco radio market. *Broadcasting & Cable Yearbook*, pp. B-455, B-704 (1997).

¹³ The fact that the Channel 300A substitution to Robinson would permit the reallocation of Channel 300C1 to Lewisville, and thereby provide an additional service to a substantial number of people in the Dallas Urbanized Area (see Heftel's Comments, p. 13), should have no effect upon this determination. See *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd at 12684, n.7.

III.

Heftel's Alternative Proposal Should Not Be Adopted

Heftel's "alternative proposal"¹⁴ that the allotment of Channel 300A to Robinson be circumscribed by three specified reference points to assure that the proposed facility would provide a city-grade signal to less than 50% of the Waco Urbanized Area should not be considered. Although the reduced coverage of the Waco Urbanized Area may reduce the signal population coverage to some degree under the first *Tuck* criterion, it does not negate the facts that (i) a substantial portion of Robinson is located within the Waco Urbanized Area, (ii) Robinson is interdependent with Waco, and (iii) the needs and interests of Robinson residents are already well-served by the numerous stations serving the Waco Urbanized Area. Indeed, the Commission has always required those stations seeking to reallocate their channels from rural communities to suburban communities within urbanized areas to demonstrate that the proposed community of license warrants a first local service preference. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd at 10354. The 50% city-grade coverage standard was adopted to govern only those cases where the specified community was located "outside but proximate to" an urbanized area. *Id.*

Furthermore, the specified suburban community must be entitled to a first local service preference in accordance with the *Tuck* criteria irrespective of where the proponent proposes to locate its transmitter site. To permit rulemaking proponents such as Heftel to move to a suburban community within an urbanized area merely by specifying a restricted transmitter site would produce

¹⁴ See Heftel Comments, p. 15.

the very anomalous results the Commission sought to avoid in *Tuck* by condoning an artificial and unwarranted manipulation of the Commission's policies.¹⁵ See *KFRC*, 5 FCC Rcd at 3223.

IV.

The Comments of Graham Should Not Be Considered

Graham is the licensee of Station KWKQ(FM), Graham, Texas. In its Comments, Graham supports the substitution of Channel 237A at Jacksboro because it would permit Station KWKQ to upgrade its facilities from Channel 296C3 to 296C2. Graham Comments, p. 1. Nevertheless, as Graham acknowledges, its Comments were filed after the initial comment period. Therefore, Graham's Comments are untimely and are not entitled to consideration in this proceeding. *Weaverville, California*, DA 97-343, n. 2 (released February 21, 1997); *Frederiksted, Virgin Islands*, 10 FCC Rcd 8076, 8077, n.6 (Chief, Allocations Branch 1995); *Crestview and Westbay, Florida*, 7 FCC Rcd 3059, n.2 (Chief, Allocations Branch 1992).

V.

Conclusion

As demonstrated herein, the proposal set forth in the *NPRM* cannot be adopted because Heftel failed to protect the reference coordinates for the existing allotment of Channel 240C1 at Mineral Wells.

Moreover, even assuming, *arguendo*, that the existing allotment of Channel 240C1 at Mineral Wells did not preclude the proposal set forth in the *NPRM*, Heftel's proposed substitution

¹⁵ Heftel's alternative proposal to reduce its population coverage even further at Robinson serves only to underscore the fact that Heftel has no genuine interest in serving the needs and interests of the Robinson community. Instead, the reallocation of Channel 300A to Robinson is merely a means of clearing the way for Channel 300C1 to be reallocated to Lewisville, which is approximately 15 miles from Dallas. Indeed, the sole purpose of Heftel's proposal is to upgrade Channel 300C2 to 300C1 at Gainesville, and have the channel reallocated to Lewisville where Heftel could serve a substantial portion of the Dallas Urbanized Area.

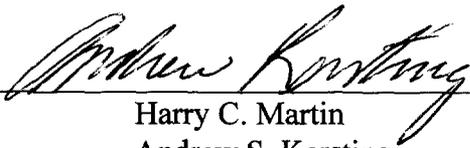
and reallocation of Channel 300A to Robinson cannot be adopted because the community of Robinson is not entitled to a first local service preference, and the proposed reallocation would not result in a preferential arrangement of allotments under the fourth allotment priority. Therefore, because the Channel 300A substitution at Robinson is necessary to accommodate the Channel 300C1 reallocation to Lewisville, Heftel's proposal to substitute Channel 300C1 for Channel 300C2 at Gainesville and reallocate Channel 300C1 to Lewisville also cannot be adopted.

Finally, the Comments filed by Graham are untimely, and, thus, are not entitled to consideration in this proceeding.

WHEREFORE, in light of the foregoing, Metro Broadcasters-Texas, Inc. respectfully requests that the Commission GRANT its counterproposal, AMEND the FM Table of Allotments in accordance therewith, and MODIFY the license of Station KHYI(FM), Howe, Texas, to specify operation on Channel 237C2 in lieu of Channel 237C3.

Respectfully submitted,

METRO BROADCASTERS-TEXAS, INC.

By: 
Harry C. Martin
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street
11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

May 20, 1997
c:\ask\...martin\rm\lewistex.rep

Exhibit A

**Relevant Portion of Exhibit 1 to Heftel's
July 26, 1996, Petition for Rulemaking**

***** FM CHANNEL SPACING STUDY *****

Job title: JACKSBORO CITY REFERENCE
 Channel: 237A
 Database file name: D:\FCCDATA\FM960613.EDX

Latitude: 33 13 23
 Longitude: 98 9 14
 Pre-1989 Class A spacings?: N
 Reqd.

CH	Call	Record	City	ST	Status	Bear.	Dist.	Dist.	Result
235C	KEWS	14777	Arlington	TX	LIC	122.2	131.2	95.0	36.2
237C3	KHYI	14814	Howe	TX	LIC	82.0	146.1	142.0	4.1
238C	KCKR	15374	Waco	TX	LIC	160.0	224.2	165.0	59.2
239C1	KKAJFM	15457	Ardmore	OK	LIC	42.5	132.5	75.0	57.5
240C1		15918	Mineral Wells	TX	VACANT	180.4	59.7	75.0	-15.3
240C3	KYXSFM	15919	Mineral Wells	TX	LIC	174.1	45.9	42.0	3.9
236A	KVMX	15930	Eastland	TX	ADD	217.8	104.8	72.0	32.8
237C3		15970	Lawton	OK	VACANT	350.4	143.7	142.0	1.7
237C3	KMGZ	15985	Lawton	OK	APP	349.0	153.0	142.0	11.0
237A	KMGZ	15996	Lawton	OK	CP	349.0	153.0	115.0	38.0
235C2	NEW	15998	Electra	TX	CP	321.2	123.1	55.0	68.1
238C1	KVRPFM	16338	Haskell	TX	LIC	267.9	155.1	133.0	22.1

***** End of channel 237 study *****

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 20th day of May, 1997, copies of the foregoing Reply Comments were hand delivered or mailed first-class, postage pre-paid, to the following:

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, DC 20554

Ms. Pam Blumenthal*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, DC 20554

Roy R. Russo, Esquire
Lawrence N. Cohn, Esquire
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, DC 20036
Counsel for Heftel Broadcasting Corporation

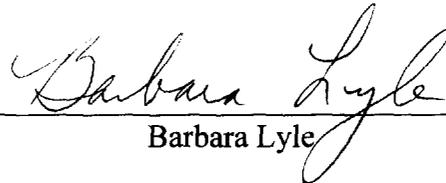
Mark N. Lipp, Esquire
Ginsburg, Feldman & Bress
1250 Connecticut Avenue, N.W.
Washington, DC 20036-2600
Counsel for Hunt Broadcasting, Inc.

Robert Healy, Esquire
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, DC 20036
Counsel for Jerry Snyder and Associates, Inc.

Erwin G. Krasnow, Esquire
Verner, Liipfert, Bernhard,
McPherson & Hand, Chartered
901 15th Street, N.W., Suite 700
Washington, DC 20005
Counsel for Graham Newspapers, Inc.

William J. Pennington, Esquire
P.O. Box 403
Westfield, Massachusetts 10186
Counsel for Great Plains Radiocasting

John F. Garziglia, Esquire
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, DC 20006
Counsel for K95.5, Inc. (licensee of Station KITX)


Barbara Lyle

* Hand Delivered